Foreign Labor Certification Programs

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Background

The foreign labor certification programs enable employers to hire foreign workers on a temporary or permanent basis to fill skilled or unskilled jobs in the United States. Under the Immigration and Nationality Act (INA), which regulates the admission of aliens to the United States, work visas can be granted to foreign workers only when the Department of Labor (DOL) certifies that (1) there are insufficient qualified U.S. workers available and willing to perform the specified work at the prevailing wage in the area of intended employment, and (2) the admission of foreign workers would not adversely affect the wages and working conditions of U.S. and permanent resident workers. DOL issues labor certifications for six foreign labor programs: permanent labor certification; H-1B specialty (professional) workers; H-1C nurses in disadvantaged areas; H-2A temporary labor certification (seasonal agriculture); H-2B temporary labor certification (nonagricultural); and D-1 crewmembers certification.

While each foreign labor program is unique, there are similar requirements for all programs that an employer must complete before a labor certification is issued. For example, the employer must (1) ensure that the position being filled meets the criteria for the requested program; (2) complete the appropriate forms, include any requested documentation, and pay relevant application fees; and (3) ensure that the offered wage at least equals the prevailing wage for the position being filled, which is the average wage paid to all other workers in the requested occupation. DOL then reviews the work visa application and is statutorily required to certify it unless it determines the application is "incomplete or obviously inaccurate." Once an application is certified by DOL, employers must then petition the Bureau of Citizenship and Immigration Services (BCIS) for a visa, after which the State Department will issue an immigrant visa number.

OIG Work

The OIG's growing body of work on the foreign labor certification programs shows how fraud, abuse, and systemic weaknesses can harm the integrity of the programs. We are concerned that nontraditional, transnational organized crime groups from Asia, Eastern Europe, and Russia, among others, are filing false labor certifications with potentially harmful consequences. For example, these programs could be exploited by terrorists to infiltrate the country, thereby posing a threat to our national security, or by illegal aliens who supplant U.S. workers and depress American wages. Given that this program is one of the few legal avenues available for immigrants who want to enter the United States on a temporary or permanent basis and the large amounts of money unscrupulous agents or recruiters can earn from aliens seeking entry into the country, there is a strong incentive to commit fraud or abuse.

OIG alien certification casework has yielded significant results. In fiscal year (FY) 2003, we had 177 indictments, 87 convictions, and more than $7.2 million in monetary results. Moreover, in FY 2002, we had 40 indictments, 12 convictions, and $1.4 million in monetary results.

The OIG's growing body of work in this area shows how fraud, abuse, and systemic weaknesses can harm the integrity of the programs.

Highlights of OIG Investigative Work

The following OIG investigations provide examples of the types of fraud committed in connection with DOL's foreign labor certification programs.

Attorney Sentenced to Ten Years' Imprisonment

A joint investigation conducted with the Department of State OIG, the BCIS, and others revealed that Samuel Kooritzky, a Virginia attorney, submitted thousands of applications for labor certifications on behalf of businesses that had no knowledge of the filings through his law firm, Capital Law Centers. None of the employers named by Kooritzky on the applications had authorized him or any of his associates to apply for labor certifications on their behalf. Kooritzky would later sell the approved labor certifications to aliens for between $7,000 and $20,000. As a result of the scheme, Kooritzky and his co-defendant, Ronald Bogardus, a former State Department engineer, made more than $11 million during an 18-month period. Bogardus' role was to go to restaurants and obtain managers' names and signatures, which he later used on the applications without the managers' knowledge.

Kooritzky was convicted on all 57 counts of a Federal indictment, including conspiracy, labor certification fraud, false statements, immigration fraud, and money laundering. He was sentenced to 10 years in prison and was ordered to forfeit $2.3 million to pay restitution to his victims. Bogardus pled guilty to conspiracy, labor certification fraud, money laundering, immigration fraud, and extortion. He was sentenced to more than eight years' imprisonment and forfeited more than $4 million in cash and real property.

Virginia Immigration Attorney Sentenced

A joint investigation conducted with the BCIS and the FBI found that Washington, D.C., immigration attorney S. Anita Ryan defrauded clients who were seeking work visas and permanent resident status of more than $350,000 over an eight-year period. Ryan sold approved labor certifications and work visas without notifying the original applicants. She continued to bill and collect fees from the original applicants even though their approved documents had been sold or their cases terminated without their knowledge. Ryan was sentenced to six years in prison and four years' supervised release and was ordered to pay nearly $400,000 in restitution to her clients.

California Landlord Sentenced to Eight Years and Ordered to Pay $2 Million in Restitution

A joint investigation conducted with the BCIS, the FBI, and others found that Lakireddy Reddy, of Berkeley, California, along with other family members, carried out a widespread conspiracy since 1986 to bring at least 25 Indian nationals, including young females for Reddy's sexual services and cheap labor, into the United States through fraudulent abuse of the H-1B visa program. Reddy pled guilty to charges of conspiracy to bring aliens into the United States illegally, aiding and abetting, transportation of a minor in foreign commerce for illegal sexual activity, and making a false statement on a tax return. Reddy was sentenced to eight years in prison, was ordered to register with the State of California as a sex offender, and was required to pay $2 million in restitution to seven young girls whom he victimized.

Ringleader Sentenced to One Year in Prison and Ordered to Pay More Than $270,000 in Restitution

A joint investigation conducted with the BCIS and the Department of State found that over a three-year period, Matahom "Pearl" Scully, a former immigration consultant in San Francisco, California, and her co-conspirator, Danny Reyes, controller of Golden State Health Care, a California firm specializing in convalescent care, filed hundreds of fraudulent petitions for Filipino aliens seeking admission to the United States through the H-1B visa program. Instead of placing them in high-skilled jobs as required by the H-1B program, Scully and Reyes placed the foreign workers in low-skilled, low-paying jobs such as janitors, certified nursing assistants, and maintenance staff. Scully pled guilty to visa fraud and conspiracy and was sentenced to one year in prison and ordered to pay more than $270,000 in restitution. In addition, Reyes pled guilty to alien smuggling and was sentenced to two years' probation after cooperating with the investigation.

Texas CEO Pleads Guilty

A joint investigation conducted with the BCIS revealed that from July 2000 to March 2001, Heyn Naude, CEO of Brexicom, Inc., of Austin, Texas, filed 42 H-1B visa petitions on behalf of South African information technology professionals, claiming that Brexicom would hire the visa applicants as systems analysts earning

$42,000 per year. The investigation disclosed that Naude falsified information on the forms he submitted to the government, and that Brexicom had no jobs available for applicants when they entered the country. Once the applicants arrived in the United States, they were instructed by Naude to find their own jobs through Internet Web sites, yet he had charged each applicant between $850 and $2,330 to process the H-1B visa application. Naude pled guilty to charges of conspiracy, visa fraud, and making false statements and was sentenced to two years in prison and ordered to pay more than $130,000 in restitution.

Florida Attorney Loses Law License

Avi Carmel, a Miami immigration attorney, disposed of his law practice and resigned from the Florida Bar Association following his sentencing to one year in prison and three years' probation. Carmel pled guilty to conspiracy to commit fraud by falsifying employment-based visa petitions and directing attorneys and paralegals to misrepresent the work experience and backgrounds of alien petitioners on visa applications to DOL and the BCIS (then the INS). The investigation, conducted with the BCIS, found that Carmel falsified the ownership and corporate structure of sponsoring businesses through fabricated stock certificates.

California Immigration Company Owner Sentenced

A joint investigation conducted with the BCIS and the California Employment Development Department of Inter-World Immigration Service of Los Angeles, California, revealed that its owner, Antonina Peralta, and multiple co-conspirators were involved in the preparation of fraudulent employment-based petitions that were submitted to DOL, the BCIS (then the INS), and the California Employment Development Department since the early 1990s. Two co-conspirators recruited petitioning employers, created fictitious companies, and stole the identities of legitimate companies to be used on at least 100 fraudulent H-1B and permanent labor certification petitions. Peralta pled guilty to false statement charges and was sentenced to one year in prison and three years' supervised release and fined $2,000.

Texas Immigration Attorney Sentenced

A joint investigation with the Department of State, the FBI, and others found that Justin Jin-Lin Ong, an immigration attorney in Houston, Texas, represented a number of Chinese aliens who were seeking immigration visas and ultimately permanent residence in the United States. In the course of his practice, he gave two aliens false immigration documents to facilitate their admission as students at Houston Community College. He also created shell companies and represented on immigration documents that the aliens were employed. As part of Ong's scheme, he filed with DOL fraudulent alien labor certifications required for the issuance of visas. Ong was sentenced to four months in prison, four months of home confinement, three years' supervised release and fined $7,500 following his guilty plea to charges of visa fraud and filing a fraudulent income tax return. As part of his plea agreement, he also agreed to surrender his law license, pay back taxes of more than $90,000, and cease any employment related to immigration law.

Computer Company President Pleads Guilty

A joint investigation conducted with the BCIS uncovered a scheme carried out by Syamala Kamineni, the president of Deep Sai Consulting based in Lawrenceville, Georgia, involving her filing of approximately 200 labor condition application forms with DOL and attesting that her company had computer programming and consulting jobs (supposedly paying $40,000 to $60,000 per year) for aliens in the United States when in fact there were no such jobs available. By completing and filing the labor condition applications with DOL, Kamineni caused visa petitions to be issued by the BCIS (then the INS). The petitions granted visa status to numerous aliens who arrived in the United States from India without employment in the computer industry. Some of the aliens admitted to paying Kamineni approximately $3,000 each for obtaining the visas. Kamineni pled guilty to criminal charges of harboring illegal aliens and knowingly hiring illegal aliens and was sentenced to one year of probation. In addition, Deep Sai Consulting pled guilty to harboring illegal aliens.

In addition to our investigative work, the OIG has conducted several audits of DOL's foreign labor certification programs.

DOL's Permanent Labor Certification and H-1B Programs Are Not Adequately Protecting U.S. Jobs or Wages

We audited DOL's role in the permanent labor certification (PLC) and H-1B programs in 1996. We found that while the Employment and Training Administration (ETA) was doing all it could within its authority, these programs were not adequately protecting U.S. workers' jobs or wages. DOL's role amounted to little more than a paper shuffle in the PLC program and a "rubber-stamping" of labor condition applications (LCAs). Specifically, we found that the PLC program allows aliens to immigrate (based on their attachment to a specific job) and then shop their services in competition with equally or more qualified U.S. workers without regard to prevailing wages. From our sample, we determined that 11% never worked for the petitioning employer after adjusting to permanent resident status even though the only reason for obtaining a green card was that no qualified U.S. workers were available.

We also found that the labor market test employers used to determine whether qualified U.S. workers are available for a position for which an application has been submitted is perfunctory at best and a sham at worst. We found that employers are using the H-1B program as a probationary tryout employment program for illegal aliens, foreign students, and foreign visitors to determine if they will be sponsored for permanent status. Neither of these programs has been modified since our report was issued. Moreover, the use of these programs has grown given increases in the numbers of visas issued.

H-1B Technical Skills Training Grants Did Not Achieve Intended Employment Outcomes

We also conducted six performance audits of the H-1B Technical Skills Training Grant Program in 2002, which is designed to train and place workers directly into highly skilled occupations. At the time of our review, DOL had conducted three rounds of grant competition and awarded 43 technical skills training grants totaling approximately $96 million. We audited six of those grantees, which had received approximately $15.4 million in grant funds, to evaluate whether they were meeting the intent of the program and the requirements of their grants. We specifically reviewed project implementation, outcome achievement, and fiscal accountability. Overall, we found that training was implemented and target populations were served. However, none of the participants in two of the grants obtained employment or upgrades in occupations for which they were trained. Two other grantees did not track placements and, therefore, employment outcomes were unknown. Further, just three of the six grantees demonstrated that their projects could continue to operate after the current grants ended, a requirement of the grants, and we questioned more than $1.6 million in costs, or 29% of reported Federal outlays.

Consolidation of the Department's Enforcement Responsibilities for the H-2A Program Could Better Protect Agricultural Workers

An audit of DOL's H-2A certification procedures in 1998 found that the process administered by ETA was ineffective. At the time of our review, we found that efforts by employers and State Employment Security Agencies (now known as State Workforce Agencies-SWAs) failed to recruit and place significant numbers of U.S. workers in agricultural jobs. In addition, we raised concerns that the program may not be adequately protecting agricultural workers' jobs, wages, and working conditions since DOL certified only 1% of the estimated total temporary agricultural workforce. This meant that most temporary workers were hired through means other than H-2A. Therefore, employers were not subject to the program's wage and working condition requirements. Compounding the problem is the large labor pool of illegal immigrants that employers can hire from for temporary agricultural jobs.

Finally, we found little evidence of coordination in matters related to H-2A investigations between ETA and DOL's Wage and Hour Division (WHD), which share enforcement responsibilities for the program. We recommended that enforcement responsibility for employer compliance be consolidated within WHD and that resources be shifted from ETA to WHD to assist it in its expanded role. While legislation was proposed to address our concerns, to date nothing has been enacted or implemented to revise the program.

Conclusion

Given our investigative and audit work in this area, we believe that the level of fraud and abuse committed using the foreign labor certification programs is more extensive even than what is currently known. More needs to be done to ensure the integrity of the process so that American jobs and wages are protected. Toward that end, the OIG is currently developing common indicators, or "red flags," that ETA can use to detect fraudulent activity based on the case experience of OIG investigators and our review of thousands of applications contained in selected state permanent labor certification databases. We are also working with ETA to implement changes to its current system to avoid fraudulent labor certification activity.

From an audit perspective, we are currently completing an assessment of DOL's foreign labor certification programs to identify vulnerabilities that may lead to fraud and abuse. In addition, we are auditing applications for permanent labor certification that resulted from Section 245(i) of the Immigration and Nationality Act, which permits a nonimmigrant to adjust his or her status, under certain circumstances, to that of a person admitted for permanent residence.

Legislative Recommendations

Grant DOL the authority to verify the information submitted on labor condition applications to ensure the integrity of the foreign labor certification process.

If DOL is to have a role in the foreign labor certification process, it must have the statutory authority to ensure the integrity of that process, including the ability to verify the accuracy of information provided on labor condition applications. Currently, DOL is statutorily required to certify such applications unless it determines them to be "incomplete or obviously inaccurate." Our concern about the Department's limited ability to improve the integrity of the certification process is heightened by the results of OIG investigations that continue to detect fraud in labor certification programs.

Significant OIG Work

U.S. v. *Kooritzky* (E.D. Virginia, March 7, 2003)
U.S. v. *Bogardus* (E.D. Virginia, October 18, 2002)
U.S. v. *Ryan* (E.D. Virginia, August 2, 2002)
U.S. v. *Reddy, et al.* (N.D. California, June 19, 2001)
U.S. v. *Scully, et al.* (N.D. California, April 20, 2001)
U.S. v. *Naude* (W.D. Texas, September 5, 2001)
U.S. v. *Carmel* (S.D. Florida, January 17, 2001)
U.S. v. *Peralta* (C.D. California, October 30, 2000)
U.S. v. *Ong* (S.D. Texas, June 26, 2000)
U.S. v. *Kamineni* (N.D. Georgia, November 23, 1999)

Audit of the New York Work Alliance H-1B Technical Skills Training Grant number AH-10854-00-60, August 1, 2000– June 30, 2001 (September 30, 2002)

Audit of the San Francisco Private Industry Council H-1B Technical Skills Training Grant number AH-10855-00-60, August 1, 2000–December 31, 2001 (September 30, 2002)

Audit of The League/SEIU 1199 Training and Upgrading Fund H-1B Technical Skills Training Grant number AH-11092-01-60, November 15, 2000–September 30, 2001(September 30, 2002)

Audit of Workforce Investment Board of Southeast Los Angeles County H-1B Technical Skills Training Grant number AH-11086-01-60, November 15, 2000–December 31, 2001(September 30, 2002)

Audit of the Metro North Regional Employment Board H-1B Technical Skills Training Grant number AH-11085-01-60, November 15, 2000–December 31, 2001 (September 26, 2002)

Audit of the Workplace, Inc.'s H-1B Technical Skills Training Grant, number AL-10854-00-60, March 27, 2000–June 30, 2001 (March 26, 2002)

Consolidating Labor's Enforcement Responsibilities for the H-2A Program Could Better Protect U.S. Agricultural Workers (March 31, 1998)

ETA's Foreign Labor Programs (May 22, 1996)

Addendum–Background Information

Permanent Labor Certification

Under the permanent labor certification program, employers can hire foreign workers to work permanently in the United States in order to fill skilled or unskilled positions. An employer must fill out an application for alien employment certification that details the job duties and work experience required, which is then submitted to its SWA for initial review. If no problems are detected, the SWA then works with the employer to develop a recruitment plan to try and attract U.S. workers. If no qualified U.S. workers are identified, the application and all supporting documents are forwarded to the appropriate DOL regional office for review and a final determination granting or denying the application. Once certified by DOL, the application and immigrant petition is then submitted by the employer to the BCIS for approval, after which a visa is issued by the State Department.

This process can be expedited if an employer can show that it has engaged in a recruitment effort to hire U.S. workers for the previous six months but has not been able to identify available and qualified workers. This process must be requested when submitting an application to the SWA. In addition, DOL has compiled a list of occupations it has determined have insufficient U.S. workers who are available or willing to fill those positions. Known as "Schedule A" occupations, these positions include nurses, physical therapists, and academic scholars. For these positions, employers can file an application directly with their local BCIS center rather than with DOL or a SWA. DOL has also compiled a list of occupations that it has determined have sufficient U.S. workers available because they are mostly entry-level positions that require little or no education or experience. Known as "Schedule B" occupations, they include cashiers, short-order cooks, and housekeepers, among others. To fill these positions, employers must request a Schedule B waiver before certification can be granted.

Visit the OIG Website:
www.oig.dol.gov

H-1B Specialty (Professional) Workers

In response to demands from industries that were experiencing skills shortages in areas such as information technology, Congress amended the INA when it implemented the H-1B program in 1992 (Immigration Act of 1990, P.L. 101-649, 11/29/90). Under this program, employers can temporarily employ foreign workers in the United States in an occupation that requires specialized knowledge or as a fashion model of distinguished merit and ability. Initially, the number of foreign workers who could be issued an H-1B visa per year was set at 65,000, but it was temporarily increased to 115,000 in fiscal years 1999 and 2000 and to 107,500 in 2001 by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA 1998, P.L. 105-277, 10/21/98). ACWIA 1998 was later amended by the American Competitiveness in the Twenty-First Century Act of 2000 (ACWIA 2000, P.L. 106-313, 10/17/00), which increased the temporary cap to its current level of 195,000. The cap reverted back to its original limit of 65,000 on September 30, 2003.

Since individuals cannot gain H-1B status on their own, a U.S. employer or their authorized representative must sponsor them. Employers are responsible for submitting a completed LCA that specifies the wages, working conditions, and benefits to be provided to the H-1B nonimmigrant. Employers must also attest that the information provided on the LCA is "true and accurate" under penalty of law. H-1B certification is valid for up to three years, though employers can apply for extensions not to exceed a six-year maximum stay.

In addition to temporarily increasing the annual limit on H-1B visas, ACWIA 1998 created the H-1B Technical Skills Training Grant Program administered by ETA within DOL. A $500 user fee (which was later raised to $1,000) was imposed on employers for each H-1B application submitted for certification to help fund this program. These grants are intended to train U.S. workers for high-skilled, high-technology occupations so that there will be less need to import workers. Local workforce investment boards are eligible to receive 75% of all grants awarded, while business partnerships are eligible for the remaining 25% of funds. Like the temporary cap increase, the employer fees expired on September 30, 2003.

Addendum–Background Information

H-2A Temporary Labor Certification (Seasonal Agricultural)

Agricultural employers who anticipate a shortage of U.S. workers to perform agricultural labor or services of a temporary or seasonal nature may request to bring nonimmigrant foreign workers to the United States by filing an application for temporary foreign agricultural labor certification. "Temporary or seasonal nature" means employment performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than one year when an employer can show that the need for the foreign worker(s) is truly temporary. Applications must be filed 45 days prior to the first date the workers are needed.

Employers who file an application for temporary foreign labor certification pursuant to H-2A regulations must meet specific conditions regarding recruitment, wages, housing, meals, transportation, workers' compensation insurance, tools and supplies, and other conditions. Upon receipt of an employer's application for temporary foreign agricultural labor certification, the SWA must promptly prepare a local job order and begin recruiting U.S. workers in the area of intended employment. A DOL regional administrator will certify the application if the employer has complied with all requirements as established by law and regulation. Even after certification is granted, the employer must continue to recruit U.S. workers until the H-2A workers have left for their designated workplaces. The SWA must continue to refer, and the employer must then hire, all qualified and eligible U.S. workers who apply during the first half of the contract time period.

DOL's Employment Standards Administration and ETA share enforcement responsibilities for the H-2A program. Specifically, ESA is responsible for enforcing the contractual obligations employers have toward employees and may assess civil money penalties and recover unpaid wages. Administrative proceedings and/or injunctive actions through Federal courts may be instituted to compel compliance with an employer's contractual obligations to employees. ETA enforces other aspects of the laws and regulations and is responsible for administering sanctions for program violations.

H-2B Temporary Labor Certification (Nonagricultural)

The H-2B nonimmigrant program permits employers to hire foreign workers to come to the United States and perform full-time, temporary nonagricultural work for up to one year, which may be one time, seasonal, peak load, or intermittent. Examples of this type of work include landscaping, forestry, hotel housekeeping, and tree planting. Currently, there is a 66,000 per year limit on the number of foreign workers who may receive H-2B status.

The process for obtaining H-2B certification is similar to but less extensive and time-consuming than permanent certification. The employer must file an application with the local SWA and justify the need for temporary workers. One application may be used to fill multiple openings of the same job at the same rate of pay. Applications must be submitted at least 60 days, but not more than 120 days, before the worker is needed. The employer must then attempt to recruit and hire U.S. workers and explain why any U.S. interviewees were not hired. H-2B certification is not transferable from one employer to another and is issued only for a specific job opportunity, for a specific number of workers, and for a specific employment period. The employer then files with the BCIS for an H-2B work visa. Since DOL's decision to approve or deny certification serves only as an advisory to the BCIS, employers can still file with the BCIS even if denied, though in most cases H-2B workers will not be allowed into the country without DOL certification.

For more information, contact the OIG's Office of Planning, Liaison, and Communications at (202) 693-5238.